

Performance Review Standards for Fair Housing Requirements in the CDBG Program

March 19, 1992

MEMORANDUM FOR: Michael A. Smerconish, Regional Administrator - Regional Housing Commissioner, 3C

ATTENTION: Choice Edwards, Manager
Office of the Manager, 3.3S

FROM: Anna Kondratas, Assistant Secretary for Community Planning and Development, C

SUBJECT: Performance Review Standards for Fair Housing Requirements in the CDBG Program (24 CFR 570.904)

This is in response to your memorandum dated September 20, 1991, requesting guidance on policies regarding CDBG grantees' duties to affirmatively further fair housing in their CDBG program and as part of their CHAS requirement in FY 1992. You also expressed concern over the absence of such policy, especially since the enforcement of fair housing is one of the Secretary's priorities.

The issues that you have raised are useful and timely; a Headquarters Task Force on Areas of Minority Concentration and Affirmatively Furthering Fair Housing is looking at these types of issues. This Task Force is currently developing a rule on affirmatively furthering fair housing in accordance with the Fair Housing Act at Section 808(e)(5). This new regulation would encompass the affirmative fair housing requirements of the CHAS, the HOPE and HOME programs, and the CDBG program. The Task Force is also determining the performance standards that will be used to measure compliance with the newly established requirements. HUD will publish the proposed rule in the Federal Register to provide an opportunity for public comment.

In the interim, existing policy on affirmatively furthering fair housing is in a memorandum dated May 31, 1991, that was jointly signed by the Assistant Secretaries for Community Planning and Development (CPD) and Fair Housing and Equal Opportunity (FHEO). In addition, FHEO is developing guidance on identifying and handling non-compliance and on reviewing the CHAS requirements to affirmatively further fair housing.

As for the specific issues that you raised in your memorandum, my comments, developed in consultation with FHEO, follow:

Issue: To what reasonable extent or degree can the field office expect the grantee to carry out its recommendations from its Fair Housing Analysis in a timely manner, including the expenditure of CDBG funds, to further local fair housing for FY 1992? What is the expected extent of grantee compliance with the 570.904(c)(2) action-examples?

Response: The CDBG regulation at section 570.904(c) regarding fair housing review criteria provides a safe harbor for the grantee by stating that a recipient is considered to be in compliance with its certifications to further fair housing if it has: "... conducted an analysis to determine the impediments to fair housing choice in its housing and community development activities..." and "... based upon the conclusions of the analysis..., the recipient has taken lawful steps... to overcome the effects of conditions that limit fair housing choice within the recipient's jurisdiction."

Section 570.904(c)(2) provides examples of the types of actions that the grantee may take to show its attempts to overcome the effects of the specified condition(s) that limit fair housing choice within its jurisdiction. The review standards at 570.904(c) are broadly established, affording the grantee considerable discretion in the actions it may take to affirmatively further fair housing. The grantee is not required to carry out any of these specific activities, but the grantee must carry out some activity that could be expected to further fair housing.

In carrying out activities that address the identified impediments, grantees are not required to use CDBG funds; they may use local, state or other federal funds, or in-kind services. The Department's focus is not so much on the source and amount of funds for fair housing activities, but rather on whether the activities measurably address the identified impediment(s) to fair housing.

The CDBG regulations are silent on the issue of carrying out such activities in a timely manner inasmuch as the grantee must certify each year it receives CDBG funding that it will affirmatively further fair housing. HUD's role is to presume that the grantee is in compliance with 570.904(c) if the grantee has conducted an analysis of impediments to fair housing choice and has taken any lawful steps to overcome the effects of conditions limiting fair housing choice, unless there is independent evidence to the contrary that challenges the grantee's certification. HUD expects grantees to carry out fair housing actions during each funded program year. These actions need not be different each year; they may be continuations of existing actions.

Conducting a fair housing analysis is not considered to constitute a fair housing action in and of itself. Where grantees do elect to conduct a fair housing analysis, they must also address identified impediments to affirmatively further fair housing that year. The conduct of a fair housing analysis cannot be used as justification for delaying affirmatively furthering fair housing.

Finally, FHEO will be providing technical assistance during FY 1992 to entitlement grantees on 1) implementation of an analysis of impediments (AI) to fair housing choice, 2) fair housing actions to undertake in lieu of conducting an AI, and 3) the funding of fair housing organizations for either 1) or 2) above. This technical assistance will help grantees to be aware of the Department's standards for monitoring AFFH during FY 1993.

Issue: To what extent can the field office expect the following: 1) a grantee's CHAS to echo its Fair Housing Analysis; and, 2) a grantee to carry out the analysis' various action-recommendations in a timely manner, including the CHAS listing future administrative actions and/or expenditures of CDBG, HOME, and other expected resources towards attacking local fair housing needs?

Response: Although there is a CHAS certification to affirmatively further fair housing, currently there is no required link between the CHAS and the Fair Housing Analysis. However, the Department expects the

CHAS strategy to be consistent with fair housing objectives. The focus of the CHAS is on identifying the need for, and a strategy to provide affordable housing for low-income families but does require a narrative that specifically addresses and identifies any excessive, exclusionary, discriminatory or duplicatory policies, rules and regulations that may constitute barriers to affordability. FHEO reviews the CHAS narrative for the proposed steps to ameliorate the negative effects of public policies on affordability and notes whether the steps outlined in the CHAS are consistent with that community's Fair Housing Analysis. Where HUD determines that the CHAS action plan will work at cross purposes with the grantee's Fair Housing Analysis, it should be called to the attention of the grantee and the grantee should be advised to make adjustments in either or both of the plans.

As for HUD's expectations regarding the grantee's efforts to carry out its recommendations for addressing local fair housing needs, there are no specific standards or time frames set for such accomplishments. Again, as described elsewhere in this memorandum, it is expected that more specific performance and time standards will be established through the CHAS regulations. If you have any further questions on these issues, please contact the Entitlement Communities Division at FTS 458-1577.

cc: Linda Marston, SC